

**PATENT**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicants: Short et al.

Examiner: Heyer, Dennis

Application No.: 10/533,063

Group Art Unit: 4121

Filed: May 12, 2006

Docket: P-7714 (102-680 PCT/US/RCE)

For: SUGAR BINDING SURFACE

Dated: May 7, 2010

Confirmation No: 3122

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

**REQUEST FOR REFUND**

Sir:

Applicants hereby request a refund of \$180.00 charged with the filing of an Information Disclosure Statement ("IDS") with respect to the above-identified application.

The IDS was filed on December 11, 2009 and included references cited in a counterpart Japanese application. A copy of the transmittal of the IDS is attached hereto as Exhibit A. As set forth at page 2 of Exhibit A, pursuant to 37 CFR §1.198(c)(1), since the IDS was based on references received from a foreign patent office in a counterpart foreign application within three prior months, no fee was required for consideration of the IDS.

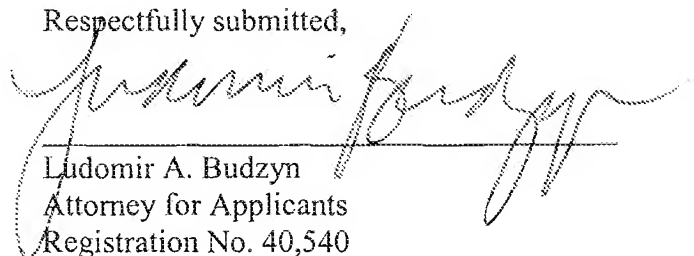
Attached hereto as Exhibit B is a partial print-out taken from Applicants' Deposit Account. As noted, on April 9, 2010, a charge of \$180.00 was applied against this Deposit Account for Code 1806, which relates to the consideration of an IDS. As indicated above, this fee was not necessary.

Applicants: Short et al.  
Application No.: 10/533,063  
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It is noted that an Office Action was issued on October 30, 2009. Attached hereto as Exhibit C is the Office Action Summary Sheet from the October 30, 2009 Office Action indicating that the action was marked final. However, an amendment and a Request for Continued Examination ("RCE") were filed on February 1, 2010, with the RCE being denied entry. Attached hereto as Exhibit D is a Reply to Notice of Improper Request for Continued Examination filed on April 2, 2010. As set forth therein, the October 30, 2009 Office Action was inadvertently marked as being final. The Office Action was in fact non-final. As such, no fee was required for consideration of the IDS. In view of the foregoing, Applicants hereby request a refund of \$180.00 to Deposit Account No. 08-2461 for the filing of the IDS.

Favorable action is earnestly solicited. If there are any questions or if additional information is required, please contact Applicants' attorney at the number listed below.

Respectfully submitted,



Ludomir A. Budzyn  
Attorney for Applicants  
Registration No. 40,540

HOFFMANN & BARON, LLP  
6900 Jericho Turnpike  
Syosset, NY 11791  
(973) 331-1700

## EXHIBIT A

**PATENT**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicants: Short et al.

Examiner: Heyer, Dennis

Application No.: 10/533,063

Group Art Unit: 1628

Filed: May 12, 2006

Docket: P-7714 (102-680 PCT/US)

For: SUGAR BINDING SURFACE

Dated: December 11, 2009

Confirmation No: 3122

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**SUPPLEMENTAL INFORMATION DISCLOSURE STATEMENT**

Sir:

In accordance with the duty to disclose under 37 C.F.R. §1.56, attached hereto is Form PTO/SB/08a listing four references which may be considered material in evaluating the patentability of the claims of the above-identified application. Copies of the references are attached hereto for the Examiner's review.

Three of the cited references were cited in an Office Action issued on November 6, 2009 in a counterpart Japanese application.

With respect to cited Japanese Patent Application No. 2002-531183, this reference is in Japanese. The English equivalent, WO 00/32255, is also attached for reference. Applicant relies on WO 00/32255 as being a translation of the Japanese reference.

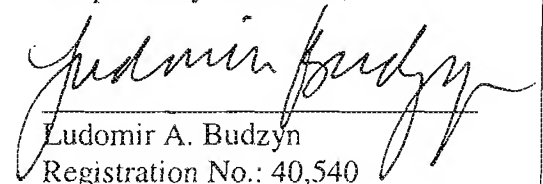
Applicants: Short et al.  
Application No.: 10/533,431  
Docket No.: P-7714 (102-680 PCT/US)  
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With respect to cited Japanese Patent Application No. 05-220217, this reference is in Japanese. An English-language Abstract is provided herewith as a concise explanation of relevance of this reference. No English equivalents were uncovered for this reference.

Pursuant to 37 C.F.R. §1.98(c)(1), it is hereby stated that each item of information contained in this Information Disclosure Statement was first cited in a communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of this Information Disclosure Statement. It is respectfully submitted that no fee is required for consideration of this Information Disclosure Statement.

Favorable action is earnestly solicited. If there are any questions or if additional information is required, please contact Applicants' attorney at the number listed below.

Respectfully submitted,



Ludomir A. Budzyn  
Registration No.: 40,540  
Attorney for Applicants

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6900 Jericho Turnpike  
Syosset, New York 11791  
(973) 331-1700

## EXHIBIT B

02/02	472	11897995	4962.055US1	1464	\$130.00	\$19,064.06
02/02	591	12697504	1880-21 DIV/DIV	4011	\$82.00	\$18,982.06
02/02	592	12697504	1880-21 DIV/DIV	2111	\$270.00	\$18,712.06
02/02	593	12697504	1880-21 DIV/DIV	2311	\$110.00	\$18,602.06
02/02	2918	10533063	P-7714	1801	\$810.00	\$17,792.06
02/02	3995	12697700	P-5837/1D1(102-605DIV)	1011	\$330.00	\$17,462.06
02/02	3996	12697700	P-5837/1D1(102-605DIV)	1111	\$540.00	\$16,922.06
02/02	3997	12697700	P-5837/1D1(102-605DIV)	1311	\$220.00	\$16,702.06
02/02	12772	11363836	792-20	1202	\$52.00	\$16,650.06
02/02	12773	11363836	792-20	1253	\$1,110.00	\$15,540.06
02/02	12775	11363836	792-20	1801	\$810.00	\$14,730.06
02/02	13326	11381763	P-5837/1	1501	\$1,510.00	\$13,220.06
02/02	13330	11381763	P-5837/1	1504	\$300.00	\$12,920.06
02/02	13514	11125722	792-19 RCE	1801	\$810.00	\$12,110.06
02/03	15787	US0872521	2011-11 PCT	8021	\$40.00	\$12,070.06
02/03	16011	US0872521	2011-11 PCT	8021	\$40.00	\$12,030.06
02/03	16721	11995960	570-63 PCT/US	2453	\$810.00	\$11,220.06
02/03	16720	11995960	570-63 PCT/US	2631	\$165.00	\$11,055.06
02/03	18033	12671786	1285-48 PCT/US	1642	\$430.00	\$10,625.06
02/03	18034	12671786	1285-48 PCT/US	1633	\$220.00	\$10,405.06
02/03	18032	12671786	1285-48 PCT/US	1631	\$330.00	\$10,075.06
02/03	18299	77925981	1479-24	7001	\$325.00	\$9,750.06
02/03	18358	2817431	1347-3	7205	\$100.00	\$9,650.06
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02/03	18603	12600921	1093-267 PCT/US (0288)	8021	\$40.00	\$9,410.06
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02/03	20669	12620982	512-159 B/DIVII/CIP (0578	8021	\$40.00	\$8,815.06
02/03	20793	12375307	294-344 PCT/US	1253	\$1,110.00	\$7,705.06
02/03	20792	12375307	294-344 PCT/US	1617	\$130.00	\$7,575.06
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02/03	20980	12375307	294-344 PCT/US (0496)	8021	\$40.00	\$7,405.06
02/03	21736	12444408	1686-152 PCT/US	8021	\$40.00	\$7,365.06
02/03	28157	E-REPLENISHMENT		9203	-\$30,000.00	\$37,365.06
02/03	29004	5866223	1201-38 (0058)	2553	\$2,055.00	\$35,310.06
02/03	29166	2820485	1295-23	7205	\$100.00	\$35,210.06
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02/03	31826	12621042	1788-47 (P00456-US-UTIL)	1051	\$130.00	\$34,480.06
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02/04	3519	12066662	1479-21 PCT/US	1501	\$1,510.00	\$30,030.06
02/04	3524	12066662	1479-21 PCT/US	8001	\$30.00	\$30,000.06
02/04	3523	12066662	1479-21 PCT/US	1504	\$300.00	\$29,700.06
02/04	4518	12672013	955-80 PCT/US	2633	\$110.00	\$29,590.06
02/04	4519	12672013	955-80 PCT/US	2681	\$135.00	\$29,455.06
02/04	4520	12672013	955-80 PCT/US	2615	\$1,352.00	\$28,103.06

## EXHIBIT C



<b>Office Action Summary</b>	Application No. 10/533,063	Applicant(s) SHORT ET AL.	
	Examiner DENNIS HEYER	Art Unit 1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 19 June 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1,3-25 and 33-37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-25 and 33-37 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## EXHIBIT D

**PATENT**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicants: Short et al.

Examiner: Heyer, Dennis

Application No.: 10/533,063

Group Art Unit: 4121

Filed: May 12, 2006

Docket: P-7714 (102-680 PCT/US/RCE)

For: SUGAR BINDING SURFACE

Dated: April 2, 2010

Confirmation No: 3122

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**REPLY TO NOTICE OF IMPROPER  
REQUEST FOR CONTINUED EXAMINATION**

Sir:

A Notice of Improper Request for Continued Examination (RCE) was mailed on March 3, 2010 indicating that a Request for Continued Examination filed on February 1, 2010 with respect to the above-identified application was improper. In particular, it was indicated that the RCE filing was in a reply to a non-final Office Action.

For the record, an Office Action was issued on October 30, 2009 which, on the Office Action Summary Sheet, was indicated to be Final. In response to the October 30, 2009 Office Action, an Amendment and a Request for Continued Examination was filed on February 1, 2010.

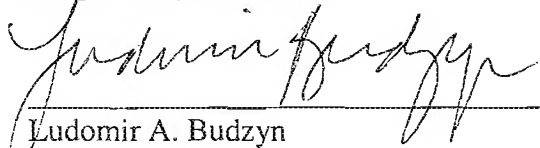
After receipt of the March 3, 2010 Notice of Improper RCE, this office was informed by Examiner Dennis Heyer, the Examiner who issued the October 30, 2009 Office Action, that the Office Action was inadvertently marked as being Final. In fact, the Office Action was non-final.

Applicants: Short et al.  
Application No.: 10/533,063  
Docket No.: 102-680 PCT/US/RCE  
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In view of this mistake, Applicants hereby accept the denial of entry of the Request for Continued Examination. If in fact the October 30, 2009 Office Action is found to have been correctly marked Final, Applicants hereby request automatic reinstatement of the Request for Continued Examination.

If there are any questions or concerns, please contact Applicants' attorney at the number listed below.

Respectfully submitted,

  
\_\_\_\_\_  
Ludomir A. Budzyn  
Attorney for Applicants  
Registration No. 40,540

HOFFMANN & BARON, LLP  
6900 Jericho Turnpike  
Syosset, NY 11791  
(973) 331-1700

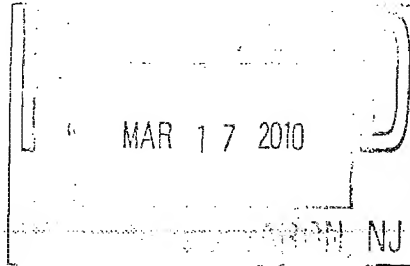


UNITED STATES PATENT AND TRADEMARK OFFICE

DKT  
102-(1521) ✓

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www.uspto.gov

32752 e 03/03/2010  
David W. Highet, VP & Chief IP Counsel  
Becton, Dickinson and Company  
(Hoffman & Baron)  
1 Becton Drive, MC 110  
Franklin Lakes, NJ 07417-1880



Paper No.

Application No.:	10/533,063	Date Mailed:	03/03/2010
First Named Inventor:	Short, Robert,	Examiner:	HEYER, DENNIS
Attorney Docket No.:	P-7714	Art Unit:	1628
Confirmation No.:	3122	Filing Date:	05/12/2006

Please find attached an Office communication concerning this application or proceeding.

Commissioner for Patents

NOTICE OF IMPROPER REQUEST FOR CONTINUED EXAMINATION (RCE)	Application No. 10/533,063	Applicant(s) SHORT ET AL.	
		Art Unit 1600	Date Mailed:

The request for continued examination (RCE) under 37 CFR 1.114 filed on 01 February, 2010 is improper for reason(s) indicated below:

1. ☐ Continued examination under 37 CFR 1.114 does not apply to an application for a design patent. Applicant may wish to consider filing a continuing application under 37 CFR 1.53(b) or a CPA under 37 CFR 1.53(d). An RCE cannot be treated as a CPA.
2. ☐ Continued examination under 37 CFR 1.114 does not apply to an application that was filed before June 8, 1995. Applicant may wish to consider filing a continuing application under 37 CFR 1.53(b).
3. ☒ Continued examination under 37 CFR 1.114 does not apply to an application unless prosecution in the application is closed. If the RCE was accompanied by a reply to a non-final Office action, the reply will be entered and considered under 37 CFR 1.111. If the RCE was not accompanied by a reply, the time period set forth in the last Office action continues to run from the mailing date of that action.
4. ☐ The request was not filed before payment of the issue fee, and no petition under 37 CFR 1.313 was granted. If this application has not yet issued as a patent, applicant may wish to consider filing either a petition under 37 CFR 1.313 to withdraw this application from issue, or a continuing application under 37 CFR 1.53(b).
5. ☐ The request was not filed before abandonment of the application. The application was abandoned, or proceedings terminated on \_\_\_\_\_. Applicant may wish to consider filing a petition under 37 CFR 1.137 to revive this abandoned application.
6. ☐ The request was not accompanied by the fee set forth in 37 CFR 1.17(e) as required by 37 CFR 1.114. Since the application is not under appeal, the time period set forth in the final Office action or notice of allowance continues to run from the mailing date of that action or notice.
7. ☐ The request was not accompanied by a submission as required by 37 CFR 1.114. Since the application is not under appeal, the time period set forth in the final Office action or notice of allowance continues to run from the mailing date of that action or notice.

**Note:** A continued prosecution application (CPA) under 37 CFR 1.53(d) cannot be filed in a utility or plant application. A CPA filed in a utility or plant application that has a filing date on or after June 8, 1995 will be treated as an RCE under 37 CFR 1.114. The request for a CPA in the instant application, however, has been treated as an improper RCE for the reason(s) indicated above.

***A copy of this Notice MUST be returned with the reply.***

Direct any questions concerning this notice to

/GOIGA N. DUCKETT/, Technology Center 1600

Telephone Number: (571)272-0522